

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOSUE DELISER,

Plaintiff,

v.

9:13-CV-803
(GTS/DEP)

J. MILLER, Lt. C.O.,

Defendant.

APPEARANCES:

JOSUE DELISER, 09-A-3970
Plaintiff, *Pro Se*
Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Counsel for Defendant
The Capitol
Albany, New York 12224

GLENN T. SUDDABY, Chief United States District Judge

OF COUNSEL:

MELISSA A. LATINO, ESQ.
Assistant Attorney General

DECISION and ORDER

Currently before the Court, in this *pro se* prisoner civil rights action filed by Josue Deliser (“Plaintiff”) against New York State Department of Corrections and Community Supervision employee J. Miller (“Defendant”) pursuant to 42 U.S.C. § 1983, are (1) Defendant’s motion to dismiss, and (2) United States Magistrate Judge Peebles’ Report-Recommendation recommending that Defendants’ motion be granted. (Dkt. Nos. 46, 53.) None of the parties have filed objections to the Report-Recommendation, and the deadline by which to do so has expired. (See generally Docket Sheet.) After carefully reviewing the relevant papers herein, including

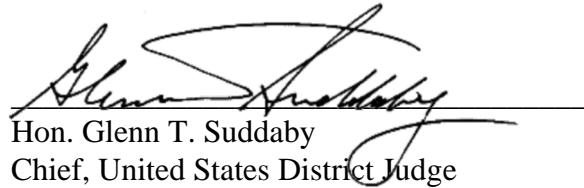
Magistrate Judge Peebles' thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation.¹ Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein, and Defendant's motion is granted.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Peebles' Report-Recommendation (Dkt. No. 53) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further
ORDERED that Defendant's motion to dismiss (Dkt. No. 46) is **GRANTED**; and it is further

ORDERED that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** in its entirety and the Clerk of the Court shall enter Judgment for Defendant and close this action.

Dated: November 25, 2015
Syracuse, New York



Hon. Glenn T. Suddaby
Chief, United States District Judge

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear-error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a clear-error review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks omitted).